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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re L.D., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. L.D., Defendant and Appellant.	A103377 (Contra Costa County Ct. No. J03-00817)

I.

INTRODUCTION

Appellant L.D., a minor, appeals from an order finding that he came within the provisions of Welfare and Institutions Code section 602 after the court found that he committed a second degree robbery (Pen. Code, § 211/212.5, subd. (c)) and a misdemeanor violation of tampering with a vehicle (Veh. Code, § 10852). The appeal raises no issues with respect to appellant's conviction for robbery. Appellant raises the fo1lowing issues: (1) that Vehicle Code section 10852 violates his constitutional right to due process because the statute's prohibition against "tampering" is unconstitutionally vague and overbroad; (2) that insufficient evidence was introduced to warrant the juvenile court's finding of guilt under this section; and (3) that the juvenile court's probation conditions concerning gang associations, displays, and activities must be set

aside or appropriately modified. We reject each of these contentions and affirm the judgment.

II.

FACTS AND PROCEDURAL HISTORY

A. Count One—Second Degree Robbery

On April 17, 2003, Charles Goodson, a math teacher at DeAnza High School in Richmond, California, was preparing lesson plans in his classroom at approximately 9:00 p.m. Goodson heard a knock at his classroom door. When he opened the door, a tall young black male, later identified as appellant, "immediately hit [him] in the face on the nose." Goodson fell backward onto the floor.

After a few seconds, Goodson's assailant said, "Give me your wallet." Goodson struggled to get up and he realized there were two persons. One person restrained him while the second person went through his pockets. One of the two hit Goodson on the left side of the head and temple, and he twice heard the words, "Give me your wallet, nigga'." The next thing he knew, the two males who had attacked him were running away towards the student parking lot, and he realized his wallet was gone.

Goodson was unable to identify either of his assailants from the school's "face book," but about three weeks later he saw appellant sitting in the assistant principal's office and recognized him as the person who first punched him and demanded his wallet.

B. Count 2—Misdemeanor Tampering with a Vehicle

On April 10, 2003, at approximately 6:00 p.m., Davey Ijams parked his bronze 1985 Nissan Maxima at the Del Norte BART station in El Cerrito in Contra Costa County. Ijams did not lock the doors of his vehicle because the alarm system was malfunctioning. He did, however, close the doors and roll up the windows.

At approximately 9:45 p.m. that same night, BART Police Officer Joel Young arrived for work at the Del Norte BART station. He was still in plainclothes and driving his personal vehicle into the BART parking garage when he noticed a Nissan Maxima parked in the vicinity of the handicapped stalls. The Nissan's two front doors were open. He testified he "observed two black male juveniles inside the vehicle as I drove by, and

. . . they didn't look handicapped, they didn't look old enough to drive." Officer Young explained that appellant was on the passenger side of the vehicle, standing within the open passenger door, with both feet on the pavement. The other youth was completely inside the vehicle, kneeling on the front seat and leaning into the Nissan on the driver's side as if he were reaching towards the passenger area.[1] Both juveniles were watching Officer Young drive into the parking garage.

As Officer Young was walking from his own parked vehicle, he saw the juveniles leave the Nissan, each shutting a door as they walked away. Officer Young called for a uniformed BART unit with a fully marked police vehicle. When they arrived, he and the other officer saw the juveniles across from the BART station and took them into custody. A screwdriver was found on appellant's person during a pat-search for weapons.

When Ijams returned to his vehicle at approximately 11:00 p.m., he found a note from the BART police. Nothing was missing from the car, and Ijams confirmed that all damage to the Nissan was preexisting.

The court sustained both counts after a contested hearing. At the disposition hearing held on July 16, 2003, the court adjudged appellant a ward of the court and ordered him to be placed in a county ranch program for the mandatory period of 270 days.

III.

DISCUSSION

A. Tampering with a Vehicle

Appellant contends that Vehicle Code section 10852, making it an offense to tamper with a motor vehicle, is too vague and overbroad to advise of the nature of the offense charged and does not set forth sufficient standards of guilt so that he was denied due process of law under the United States and California Constitutions. (U.S. Const.,

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[1] The second juvenile was identified as DeAndre J., who was also charged as a coparticipant in the robbery alleged in count 1 and was tried with appellant on both counts.

5th & 14th Amends.; Cal. Const., art. I, § 7.) Appellant also claims the evidence did not establish the commission of the offense of tampering with a motor vehicle.

Due process requires that criminal statutes be reasonably definite. (*Kolender v. Lawson* (1983) 461 U.S. 352, 357; see also *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 269.) In order for a criminal statute to satisfy the dictates of due process in this regard, it must meet two requirements. "First, the provision must be definite enough to provide a standard of conduct for those whose activities are proscribed. [Citations.] Because we assume that individuals are free to choose between lawful and unlawful conduct, 'we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [or she] may act accordingly. Vague laws trap the innocent by not providing fair warning.' [Citations.] [¶] Second, the statute must provide definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. [Citations.]" (*People v. Heitzman* (1994) 9 Cal.4th 189, 199 (*Heitzman*).)

In analyzing whether a statute is sufficiently definite to pass constitutional muster, we look not only at the language of the statute but also to legislative history and California decisions construing the statute. (*Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 246.) This is because the courts require citizens to apprise themselves not only of statutory language, but also of legislative history and subsequent judicial construction. (*Heitzman*, *supra*, 9 Cal.4th at p. 200; see also *People v. Falck* (1997) 52 Cal.App.4th 287, 293-295.) In addition, our Supreme Court has recently cautioned that "abstract legal commands must be applied in a specific *context*. A contextual application of otherwise unqualified legal language may supply the clue to a law's meaning, giving facially standardless language a constitutionally sufficient concreteness. Indeed, in evaluating challenges based on claims of vagueness, the [United States Supreme Court] has said '[t]he particular context is all important.' " (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116 (italics in original), quoting *Communications Assn. v. Douds* (1950) 339 U.S. 382, 412.)

A violation of Vehicle Code section 10852 requires proof that a person, "either individually or in association with one or more other persons," willfully injured or tampered with any vehicle or its contents or broke or removed any part of a vehicle without the consent of the owner. (Veh. Code, § 10852.) "This section proscribes alternative types of conduct: '(1) tampering with or injuring the vehicle *as a whole*, or (2) breaking or removing individual *parts* of the vehicle' [citation], and (3) injuring *or* tampering with the contents of a vehicle." (*People v. Mooney* (1983) 145 Cal.App.3d 502, 504-505 (*Mooney*), italics in original.)

Our Supreme Court has interpreted the specific meaning of the phrase "tamper" in the context of the statute to mean to "interfere with" a vehicle or its contents. (*People v. Anderson* (1975) 15 Cal.3d 806, 810.) We note that the term "interference" is much broader than damaging or altering a vehicle. It includes "any act inconsistent with the ownership thereof." (*Ibid*.; *Mooney*, *supra*, 145 Cal.App.3d at p. 505.)

We conclude that the accepted meaning of "tampering" is clear enough so that a person of "ordinary" intelligence would understand its meaning. (*Heitzman*, *supra*, 9 Cal.4th at p. 199.) Unquestionably, a person of such intelligence should know that opening the door of a parked car and trespassing, or being in an automobile without the permission of the owner, constitutes "tampering" as that term is employed in section 10852. "In a practical sense, opening the door of an unlocked vehicle to facilitate a nonconsensual entry to commit theft both interferes with the owner's right to possession and improperly alters the closed state of the vehicle." (*Mooney*, *supra*, 145 Cal.App.3d at p. 506.) Consequently, appellant's claim that the auto tampering statute is unconstitutionally vague must be rejected.

Furthermore, contrary to appellant's overbreadth argument, we do not read the prohibition against tampering as banning all forms of contact with a vehicle, however innocent. As noted, our Supreme Court has construed the word "tampering" with another's vehicle to include some improper purpose as requiring an act "inconsistent with the ownership thereof." (*People v. Anderson*, *supra*, 15 Cal.3d at p. 810.) Consequently, our Supreme Court's definition of tampering would exclude from its coverage the

hypothetical examples provided by appellant, such as "a pedestrian who peers through an open car window attempting to read the headlines of a newspaper left on the seat."

Lastly, appellant urges that the evidence was insufficient to show he "tampered" with the vehicle. However, the evidence in this case makes plain what appellant and his coparticipant were trying to do before the BART police interrupted them. The evidence at the hearing supported a reasonable inference that appellant and his coparticipant opened the doors of the car in preparation for either stealing the car itself or stealing whatever items of value they might find inside. Officer Young testified that while appellant acted as a lookout, his coparticipant was "sitting on his knees in the passenger's side as [*sic*] reaching across to . . . open a glove box or find something on the front seat." Both juveniles shut their respective doors when they saw Officer Young and walked away from the car. When appellant was arrested later, he was carrying a screwdriver. We hold that the acts appellant and his coparticipant were engaged in before they were thwarted by the arrival of the BART police amounted to tampering with an automobile.

B. Gang Association

At the disposition hearing, the juvenile court adjudged appellant a ward of the court and ordered him to be placed in a county ranch program for the mandatory period of 270 days. The probation officer indicated that appellant, then age 14, had admitted being a member of the gangs he and his friends created: HNIC (Head Niggas' in Charge) and TNA (Tearin' Niggas' Apart). While detained in detention, he had received a write-up for carving "HNIC" into his arm. Among the terms and conditions of probation, the juvenile court imposed the following gang-related conditions as recommended by the probation officer: "No gang associations, colors, clothing, insignias, signs, paraphernalia or activities."

Appellant acknowledges the gang-related conditions were related to his crimes and future criminality. Indeed, he concedes "that the undisputed facts clearly warranted the imposition of gang conditions." Instead, appellant argues that the conditions are constitutionally flawed because they are vague and overbroad. Appellant contends the gang-related conditions are constitutionally infirm because they fail to require that he

know that the person with whom he must not associate belongs to a gang or that the clothing he may not wear is gang related.

Respondent argues that appellant was required to raise an objection below and that by failing to do so, he has waived the right to complain about the conditions of probation. (*People v. Gardineer* (2000) 79 Cal.App.4th 148, 151; *In re Josue S.* (1999) 72 Cal.App.4th 168, 173; but see *In re Justin S.* (2001) 93 Cal.App.4th 811, 814-815 [constitutional challenges are immune from the waiver rule].) Appellant responds with the assertion that if the waiver rule is applied, then his attorney was incompetent for failing to object. Because we wish to avoid a future claim that appellant's counsel was ineffective for failing to object to the gang-related conditions, we reach the question of their propriety.

When a juvenile offender is adjudged a ward of the court and placed under the supervision of the probation officer, "[t]he court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) Conditions imposed on juvenile offenders may be even broader than those pertaining to adult offenders because juveniles are deemed to be more in need of guidance and supervision than adults and because their constitutional rights are more circumscribed. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033 [prohibiting tattoos]; *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 [limiting travel]; *In re Josh W.* (1997) 55 Cal.App.4th 1, 4-5 [requiring revelation of coparticipants]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1241-1243 [limiting association with others].)

Appellant's overbreadth argument is supported by *People v. Lopez* (1998) 66 Cal.App.4th 615, 628-629, in which the court held that probation conditions prohibiting the adult defendant from associating with gang members and from displaying gang indicia were unconstitutionally overbroad because they prohibited the defendant from associating with persons or displaying indicia not known to him to be gang-related. The court modified the condition to add the element of knowledge so as to make the condition more narrowly drawn. (*Id*. at p. 638; see also *In re Justin S.*, *supra*, 93 Cal.App.4th at

p. 816.)

We conclude that no such modification is necessary here. In *People ex rel. Gallo v. Acuna*, *supra*, 14 Cal.4th at pp. 1117-1118, our Supreme Court assessed the validity of an injunction against gang activity and held that knowledge could be fairly implied in the injunction. To the extent it could not, "we are confident that the trial court will . . . impose such a limiting construction on paragraph (a) by inserting a knowledge requirement should an attempt be made to enforce that paragraph of the injunction." (*Id*. at p. 1117.) We likewise conclude that should appellant be accused of violating his probation in the future, the element of knowledge will be read into the gang-related terms of his probation.

IV.

DISPOSITION

The judgment is affirmed.

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Ruvolo, J.

We concur:

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Kline, P.J.

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Haerle, J.